

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 21852 of 2007(B)

OS.40/2001 of SUB COURT, NEYYATTINKARA

PETITIONER/ DEFENDANT: JUDGMENT DEBTOR:

**WILSON NADAR, S/O.LASSAR NADAR,
AVIKKUZHI VEEDU, OLATHANNI, NEYYATTINKARA.**

BY ADV. SRI.R.T.PRADEEP

RESPONDENT:

**THANKAYYAN, S/O.SABARINATAN NADAR,
PAVARATHUVILA, VINOD BHAVAN, ARAYOOR, CHENKAL
VILLAGE, NEYYATTINKARA.**

**BY ADV. SRI.J.HARIKUMAR
SRI.S.HARIKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C).No.21852/2007

:2:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF E.P.NO.1/2004 IN O.S.NO.40/2001 DATED 3.1.2004.

EXT.P2: COPY OF OBJECTION DATED 24.6.2004 BY J.D.

**EXT.P3: COPY OF ORDER DATED 22.6.2007 IN E.P.NO.1/2004 IN
O.S.NO.40/2001.**

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J
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W.P.(C).No. 21852 of 2007
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Dated this the 4th day of September, 2007

JUDGMENT

This writ petition is filed seeking to set aside the order of the Subordinate Judge, Neyyattinkara in E.P.No.1/2004 in O.S.No.40/2001. When the decree was put into execution objection has been filed in the form of Ext.P2 from where I am not able to see any plea regarding no means. A bare reading of the order of the learned Sub judge would reveal that the decree holder was examined on 15.1.2007 and was also cross examined. Then the matter was posted for the respondents evidence. The court thereafter found the judgment debtor is having sufficient means to pay, and hence ordered arrest. When this writ petition came up for admission this Court directed the writ petitioner to make a payment of Rs.25,000/- within one month from 16.7.2007. Even that has not been complied with. The attitude of the writ petitioner is not to pay the amount. The court below had considered the evidence of the decree holder, who was cross examined also and no counter evidence is adduced to rebut the

same. So the court was perfectly justified in arriving at a conclusion regarding the means of the judgment debtor. Therefore, the order under challenge is confirmed and the writ petition is dismissed. But, in order to enable the writ petitioner to make the payment, if he intends to do so, the court below is directed not to execute the warrant of arrest for a period of three weeks and if no payment is made within the said period, the court shall issue the warrant of arrest, and, if necessary, with the help of the police arrest the judgment debtor for the realisation of the decree amount.

Writ petition is dismissed accordingly.

M.N.KRISHNAN,JUDGE

dvs